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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: **2/7/98**This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS**OFFICE ACTION SUMMARY**

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-22 are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit 1762

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15^{and 20-21,} drawn to a method of forming a film via electromagnetic energy, possibly an RF plasma, classified in class 427, subclasses 535 and 578.
- II. Claims 16-19^{and 22} drawn to a plasma apparatus with two plasma forming means (i.e. NOT what's shown in Figure 1) or for claim 22 an RF parallel plate apparatus (consistent with Figure 1), classified in class 118, subclass 723E.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used for different processes, because the gas is NOT part of the apparatus and the choice of what gas to use when, and its effects (i.e. deposition or not) are method limitations, that do not structurally limit the apparatus. For instance, two or more gas input ports may be present in an apparatus, any or all of which may input deposition gases, etching gas, pre-or post-treatment gases.

3. This application contains claims directed to the following patentably distinct species of the claimed invention:

- (1) deposition with a non-depositing pre-treatment (claims 1-10);
- (2) deposition with a non-depositing post-treatment (claims 11-15 and 20-21).

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. A telephone call was made to Gerald Ferguson, Jr. on June 29, 1998 to request an oral election to the above restriction requirement, but did not result in an election being made.

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The inventors insist on the request in writing, hence mailing to the restriction was requested. Applicants may also wish to note that besides the questionable wording in apparatus claim 16 which may be distorting the intended meaning, that "decompression chambers" as used in the method claims do not generally mean vacuum chamber.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Any inquiry concerning this communication should be directed to M. L. Padgett at telephone number (703) 308-2336 and Fax numbers (703) 305-5408 for official papers; (703) 305-3599 for after final official papers; and (703) 305-6357 for unofficial communications.

M. L. Padgett:cb
Patent Examiner

July 3, 1998



MARIANNE PADGETT
PRIMARY EXAMINER
GROUP 1100